

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

Standards for Licensure of Substance Use Disorders Treatment Facilities

Definitions; Qualifications and Responsibilities of the Medical Director

Proposed Amendments: N.J.A.C. 8:111-1.3 and 1.4

Authorized By: Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health.

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2023-013.

Submit written comments by April 22, 2023, electronically to

www.nj.gov/health/legal/ecomments.shtml or by regular mail to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

Summary

This rulemaking amends N.J.A.C. 8:111-1.3 and 1.4(a) in response to a petition

for rulemaking. On February 11, 2022, the Department of Health (Department) received a petition for rulemaking from Joseph A. Giaimo, D.O., President, American Osteopathic Association, Chicago, IL; Kevin Klauer, D.O., E.J.D., CEO, American Osteopathic Association, Chicago, IL; and Hetal Patel, D.O., President, New Jersey Association of Osteopathic Physicians and Surgeons, Pennington, NJ (petitioners).

The petitioners requested the Department to make certain amendments to the Standards for Licensure of Substance Use Disorders Treatment Facilities at N.J.A.C. 8:111-1.3, Definitions, and N.J.A.C. 8:111-1.4(a), Qualifications and Responsibilities of the Medical Director and Physicians.

Specifically, the petitioners requested the Department amend N.J.A.C. 8:111-1.3, Definitions, to include the acronym “AOA,” to be defined as the American Osteopathic Association. The petitioners also requested the definition to include the AOA’s address, telephone number, and website information.

Further, the petitioners requested the Department to amend N.J.A.C. 8:111-1.4, Qualifications and Responsibilities of the Medical Director and Physicians. Specifically, the petitioners asked the Department to make changes at N.J.A.C. 8:111-1.4(a), which sets forth the qualifications of a substance use disorders treatment facility’s (facility) medical director. The qualifications and responsibilities of a facility’s physicians are set forth at subsections (b) through (h).

Existing N.J.A.C. 8:111-1.4(a) does not include any reference to the AOA or to osteopathic physicians.

A notice acknowledging receipt of the petition was published in the September 19, 2022, New Jersey Register at 54 N.J.R. 1857(b). In accordance with applicable law, the

Department published a notice of action in the November 7, 2022, New Jersey Register at 54 N.J.R. 2111(a), announcing that the Department reviewed the petition and decided to grant the petition and initiate a rulemaking.

The Department proposes to amend N.J.A.C. 8:111-1.3 to include the definition of the American Osteopathic Association. The Department also proposes to include the AOA's address, telephone number, and website information.

The Department also proposes to amend N.J.A.C. 8:111-1.4(a) and (a)1. The proposed amendment at N.J.A.C. 8:111-1.4 would include a physician who has been certified by the AOA in Addiction Medicine to be among those physicians who are deemed qualified to work as a medical director at a substance use disorders treatment facility. This would permit an AOA-certified osteopath to serve as a facility medical director.

Further, the Department proposes to delete the requirement that, for a physician to be eligible to serve as a medical director at a substance use disorders treatment facility, the physician must have five years of experience working in such a facility, for at least 20 hours per week, and instead require one year of experience, for at least 20 hours per week. Lastly, the Department also proposes to delete the requirement that, for a physician to be eligible to serve as a medical director at a substance use disorders treatment facility, the physician must have completed the ASAM/ABAM/American Association for the Treatment of Opioid Dependence (AATOD) clinicians training course. The reason for the two proposed changes in this paragraph is to have the section conform with Deputy Commissioner Ford's November 15, 2021 Waiver of Standards at N.J.A.C. 10:161A-1.4(a). Pursuant to Reorganization Plans Nos. 001-2017 and 001-2018, Chapter 111, Standards for Licensure of Residential Substance

Use Disorders Treatment Facilities, was recodified from N.J.A.C. 10:161A to 8:111, effective December 20, 2021.

The Department also proposes to update the cross-reference at N.J.A.C. 8:111-1.4(a) from N.J.A.C. 10:161A-7 to 8:111-7, which will comport with the new codification after the chapter was recodified in 2021. Lastly, the Department proposes to delete the sentence requiring a medical director to be a member in good standing in the medical community, which can be found at N.J.A.C. 8:111-1.4(a). This proposed deletion is due to the fact that a physician must be a member in good standing in the medical community in order to be licensed; therefore, the sentence is redundant.

The Department is providing a 60-day comment period on this notice of proposal, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

Social Impact

The proposed amendments impact the following facilities licensed in New Jersey: substance (alcohol and drug) abuse treatment facilities that provide residential substance use disorders treatment to adults including, but not limited to, halfway houses, extended care facilities, long-term residential facilities, short-term residential treatment facilities and non-hospital-based (medical) detoxification, or any other similar such organization. The proposed amendments also impact hospitals licensed pursuant to N.J.A.C. 8:43G that offer hospital-based medical detoxification services in a designated detoxification unit or facility or provide any of the modalities of residential treatment listed in the prior sentence.

The proposed amendments would have a positive social impact because they are designed to maintain the quality of services for patients of the above facilities, while

providing an avenue for additional qualified individuals — osteopathic physicians with addiction accreditation and physicians who have a minimum of one year of experience working at such a facility for 20 hours each week to serve as medical directors at the facilities.

Economic Impact

The Department believes the proposed amendments would have no economic impact on taxpayers. There are no fees associated with the proposed amendments and no additional costs to facilities or to patients.

Although the Department cannot substantiate that the proposed amendments would have a beneficial economic impact on the patients of facilities, the Department is hopeful that a larger pool of candidates to choose from to fill vacancies at these facilities would translate to a more competitive hiring environment, which may result in better care for patients.

Federal Standards Statement

The proposed amendments do not impose standards on substance use disorders treatment facilities in New Jersey that exceed Federal standards.

Federal standards for opioid treatment programs are set forth at 42 CFR Part 8. Specifically, 42 CFR 8.2 identifies the qualifications of an opioid treatment program medical director. A medical director must be a physician, who is licensed to practice medicine in the jurisdiction in which the opioid treatment program is located. The Federal standards do not draw a distinction between a medical doctor (M.D.) and an osteopathic doctor (O.D.). Accordingly, no further analysis is required.

Jobs Impact

The proposed amendments would not result in the loss or gain of any jobs.

Agriculture Industry Impact

The proposed amendments would not have an impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

Although some of the facilities may be considered small businesses, as the term is defined in the Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., the proposed amendments at N.J.A.C. 8:111-1.3 and 1.4(a) would not impose any additional reporting, recordkeeping, or compliance standards on small businesses as they are defined in the Act.

Housing Affordability Impact Analysis

The proposed amendments would have no impact on the affordability of housing in New Jersey, nor would they evoke a change in the average costs associated with housing because the proposed amendments would affect the standards for licensure of substance use disorders treatment facilities.

Smart Growth Development Impact Analysis

The proposed amendments will not have any impact on the achievement of smart growth, nor would they evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed amendments would only affect substance use disorders treatment facilities.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:111-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“American Osteopathic Association” or “AOA” means the entity by that name which is the accrediting agency for all osteopathic medical schools and the primary certifying body for doctors of osteopathic medicine, for which the contact information is 142 East Ontario Street, Chicago, IL 60611, telephone (312) 202-8000, and website www.osteopathic.org.

...

8:111-1.4 Qualifications and responsibilities of the medical director and physicians

(a) Facilities required [under] **pursuant to** N.J.A.C. [10:161A]8:111-7 to hire a medical director shall ensure that the **medical director is a** physician **who** is currently licensed in accordance with the laws of this State to perform the scope of services set forth in this chapter. This physician **who is appointed medical director** must [be] **either:**

1. **Be** certified by ASAM/ABAM, [by July 15, 2016. This physician shall be a member in good standing in the medical community.] **or be Board Certified by the AOA in Addiction Medicine; or**

[1.] **2.** [A physician currently licensed to practice in the State of New Jersey, who has not completed ASAM/ABAM certification by July 15, 2016, must have] **Have** worked in a substance use disorders treatment facility a minimum of [five] **one** year[s] for at least 20 hours per week [and have completed the ASAM/ABAM/American Association for the Treatment of Opioid Dependence (AATOD) clinicians training course, www.aatod.org/clinician.html].

(b)-(h) (No change.)